

Message Text

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TO SECSTATE WASHDC 3499

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SUBJECT: CLARIFICATION DIPLOMATIC IMMUNITY

1. IN RECENT WEEKS TWO USG EMPLOYEES, ONE STATIONED AT MEXICO CITY, THE OTHER AT TUXTLA-GUTIERREZ, HAVE BEEN DETAINED BY POLICE OUTSIDE CAPITAL AREA IN THE AFTERMATH AUTOMOBILE ACCIDENTS AND DENIED THEIR FREEDOM PENDING COURT HEARINGS TO ESTABLISH RESPONSIBILITY. THESE TWO SITUATIONS RAISED QUESTION OF DIPLOMATIC IMMUNITY WHICH GOM FOREIGN OFFICE CLAIMED WAS NOT APPLICABLE IN EITHER CASE. DEPARTMENT ADVICE REQUESTED AS TO WHETHER WE MIGHT INSIST ON SOME OTHER INTERPRETATION OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS AND US/MEXICAN BILATERAL CONSULAR CONVENTION AND THUS ACCORD MORE ADEQUATE PROTECTION TO SIMILAR EMPLOYEES IN FUTURE SITUATIONS.

2. FIRST CASE INVOLVED MARINE GUARD WHO, WHILE VACATIONING IN STATE OF VERA CRUZ, LOST CONTROL OF HIS CAR AND HIT TAXI OCCUPIED ONLY BY DRIVER. BOTH CARS DEMOLISHED AND TAXI DRIVER HURT AND HOSPITALIZED BUT NOT PERMANENTLY INJURED. FOR FIRST TWO NIGHTS LOCAL OFFICIALS HELD MG IN OFFICE BUT NOT BEHIND BARS. THIRD NIGHT, ON JOINT APPEAL FROM EMBASSY AND FOREIGN OFFICE, LOCAL AUTHORITIES ALLOWED MG TO RE-JOIN FAMILY AT HOTEL UNTIL FORMAL HEARING COMPLETED NEXT DAY. FAULT FOR ACCIDENT WAS PLACED ON MG WHOSE INSURANCE COMPANY SETTLED CHARGES.

3. THE SECOND CASE INVOLVED A SCREWORM (AGRICULTURE) OFFI-
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CIAL, RESIDENT OF TUXTLA GUTIERREZ (600 MILES SOUTH MEXICO

CITY), WHO HIT AN INTOXICATED PEDESTRIAN AND KILLED HIM. ON THE ADVICE OF MEXICAN FRIENDS THIS OFFICIAL LEFT SCENE. LATER, ON INSTRUCTIONS FROM MEXICO CITY, HE REPORTED TO POLICE WHO IMMEDIATELY ARRESTED HIM. HE, TOO, WAS HELD IN AN OFFICE RATHER THAN A CELL BUT WAS DENIED FREEDOM FOR FOUR DAYS PENDING COURT HEARING. JUDGE RULED DEATH ACCIDENTAL, ASSESSED MODEST COURT COSTS 250 DOLLARS, AND SET BOND OF 800 DOLLARS TO GUARANTEE PRESENCE OF OFFICIAL FOR SIX MONTHS IN THE EVENT FURTHER CHARGES ARE BROUGHT.

4. IN EACH CASE EMBASSY IMMEDIATELY CONTACTED FOREIGN OFFICE AND REQUESTED THAT DETAINED USG PERSONNEL BE RELEASED. ASSURANCES WERE GIVEN THAT OFFICIALS WERE ADEQUATELY COVERED BY INSURANCE AND THAT EACH WOULD REMAIN IN CITY OF JURISDICTION FOR WHATEVER PERIOD NECESSARY TO COMPLETE LEGAL PROCESS. THE FOREIGN OFFICE IN BOTH INSTANCES WAS COURTEOUS AND HELPFUL BUT FIRM IN DENYING DIPLOMATIC IMMUNITY WHICH WOULD HAVE ASSURED FREEDOM FROM ARREST AND DETENTION. NEVERTHELESS, THE FOREIGN OFFICE IN EACH CASE DID CONTACT GOVERNOR OF STATE, DISTRICT ATTORNEY, AND JUDICIAL AUTHORITIES CONCERNED AND URGED SPECIAL TREATMENT AND EXPEDITIOUS HANDLING OF CASE. THIS INTERVENTION PROMPTED THE TEMPORARY RELEASE OF MARINE GUARD BUT SERVED NO PURPOSE IN CASE OF AGRICULTURE OFFICIAL.

5. MARINE GUARD'S STATUS FALLS WITHIN THE FRAMEWORK OF VIENNA CONVENTION ON DIPLOMATIC RELATIONS IN THAT HE IS QUOTE MEMBER OF ADMINISTRATIVE AND TECHNICAL STAFF UNQUOTE. THEREFORE, ARTICLE 37, REFERRING BACK TO ARTICLE 31 OF THE CONVENTION, WOULD NORMALLY ACCORD FREEDOM FROM ARREST AND DETENTION AS WELL AS FREEDOM FROM CRIMINAL JURISDICTION OF STATE AND CIVIL AND ADMINISTRATIVE JURISDICTION. FOREIGN OFFICE RULED, HOWEVER, THAT SINCE THE MARINE GUARD WAS ON VACATION HE CAUSED ACCIDENT QUOTE OUTSIDE THE COURSE OF HIS DUTIES UNQUOTE, AND WAS NOT ENTITLED TO DIPLOMATIC IMMUNITY. EMBASSY INCLINED TO AGREE BUT INQUIRES WHETHER ANY OTHER INTERPRETATION WOULD WARRANT OUR INSISTENCE ON DIPLOMATIC IMMUNITY IN SIMILAR CIRCUMSTANCES IN THE FUTURE.

6. THE CASE OF SCREWWORM OFFICIAL TIED IN WITH THE BILATERAL MEXICAN/US CONSULAR CONVENTION SINCE THE RIGHTS AND PRIVILEGES UNCLASSIFIED

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ACCORDED SCREWWORM STAFF ARE SET FORTH IN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND MEXICO, DATED AUGUST 28, 1972, BY CROSS REFERENCING PERTINENT PARTS OF THE BILATERAL CONSULAR CONVENTION. UNFORTUNATELY, ARTICLE IN WHICH STIPULATES FREEDOM FROM ARREST AND DETENTION IS NOT MENTIONED. HENCE, FOREIGN OFFICE CONTENTED THAT DIPLOMATIC IMMUNITY DID NOT APPLY. ON THE FACE OF IT, THEY ARE SEEMINGLY RIGHT. HERE AGAIN, HOWEVER, EMBASSY REQUESTS ADVICE AS TO WHETHER THE

AGREEMENT MIGHT BE INTERPRETED DIFFERENTLY SO THAT DIPLO-
MATIC IMMUNITY COULD BE CONSTRUED AS APPLYING TO SUCH PER-
SONNEL INVOLVED IN SIMILAR MISHAPS.

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